



ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re Bedoukian Research Inc.
Docket Nos. TSCA-HQ-2024-5006 &
EPCRA-HQ-2024-5006

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the
attached Consent Agreement resolving this matter is incorporated by reference into this Final
Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement,
effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: February 6, 2025

Mary Kay Lynch
Mary Kay Lynch
Environmental Appeals Judge

1 The three-member panel ratifying this matter is composed of Environmental Appeals
Judges Aaron P. Avila, Wendy L. Blake, and Mary Kay Lynch.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF)	
)	
Bedoukian Research Inc.)	
Danbury, CT)	
)	Docket Nos. TSCA-HQ-2024-5006
)	EPCRA-HQ-2024-5006
)	
Respondent)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or “Agency”), and Respondent, Bedoukian Research Inc. (“Bedoukian” or “Respondent”) (collectively, the “Parties”), hereby enter into this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudicating of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know-Act (“EPCRA”), 42 U.S.C. § 11045(c), and Section 16(a) of Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act) is being simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (b)(3).
2. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, Respondent, for purposes of this proceeding only and as required by 40 C.F.R. § 22.18(b)(2):
 - a. admits the following jurisdictional allegations and waives any defenses to jurisdiction;

- b. neither admits nor denies the specific factual allegations contained herein;
- c. consents to the assessment of a civil penalty on the terms discussed below;
- d. consents to any conditions specified in this Consent Agreement;
- e. waives any right to contest the alleged violations of law set forth herein; and
- f. waives the rights to appeal the proposed Final Order accompanying this Consent Agreement.

II. STATUTORY AND REGULATORY FRAMEWORK

EPCRA

- 3. Section 313(a) and (b) of EPCRA, 42 U.S.C. § 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility that (i) has ten or more full-time employees, (ii) is in Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code as set forth in 40 C.F.R. § 372.23, and (iii) manufactured, processed, or otherwise used one or more toxic chemicals, listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.28 and 372.65, above their reporting threshold must submit to EPA and the state in which the facility is located a chemical release form published under Section 313(g) of EPCRA for each such toxic chemical.
- 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations setting forth requirements for the submission of information relating to the release of toxic chemicals under Section 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.
- 5. “Person” as defined by EPCRA Section 329(7), 42 U.S.C. § 11049(7), means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or interstate body.
- 6. “Facility” as defined by EPCRA Section 329(4), 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.
- 7. “Full-time employee” as defined by 40 C.F.R. § 372.3 means 2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.
- 8. “Toxic chemical” as defined by Section 329(10) of EPCRA, 42 U.S.C. § 11049(10), and 40

C.F.R. § 372.3 means a chemical or chemical category listed in 40 C.F.R. § 372.65.

9. “Process” as defined by 40 C.F.R. § 372.3, means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the substance, or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.
10. “Manufacture” as defined by 40 C.F.R. § 372.3, means to produce, prepare, import, or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.
11. “Otherwise use” as defined by 40 C.F.R. § 372.3, means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.
12. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25, with respect to a toxic chemical manufactured or processed, the toxic chemical reporting threshold for the reporting form to be submitted on or before July 1 of the succeeding year is 25,000 pounds of the toxic chemical per year.
13. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25, with respect to a toxic chemical otherwise used, the toxic chemical reporting threshold for the reporting form to be submitted on or before July 1 of the succeeding year is 10,000 pounds of the toxic chemical per year.
14. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform Toxic Chemical Release Inventory Form (hereinafter, referred to as a “Form R”) for facilities that are subject to the reporting requirements of Section 313.
15. Section 313(a) and (b) of EPCRA, 42 U.S.C. § 11023(a) and (b), and 40 C.F.R. §§ 372.30(d) and 372.27(d) provide that a complete and accurate reporting form for activities involving a toxic chemical that occurred during a calendar year must be submitted on or before July 1 of

the next year.

16. With respect to activities involving a toxic chemical at a facility, when more than one threshold applies to the activities, the owner or operator of the facility must report if it exceeds any applicable threshold and must report on all activities at the facility involving the chemical, as established at 40 C.F.R. § 372.25(c).
17. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$69,733 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023.

TSCA

18. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. §§ 720.22(a)(1) and 720.40(b), provide that no person may manufacture (import) a new chemical substance unless such person submits a Premanufacture Notice (“PMN”) to EPA at least ninety (90) calendar days before manufacturing that substance.
19. Section 5(h)(4) of TSCA, 15 U.S.C. § 2604(h)(4), provides that EPA may exempt the manufacture of certain new chemicals from all or part of the full PMN requirements.
20. PREMANUFACTURE NOTIFICATION EXEMPTIONS under 40 C.F.R. Part 723 were promulgated under the authority of Section 5 of TSCA, 15 U.S.C. § 2604 (“Manufacturing and processing notices”) and sets forth EPA’s regulations regarding Section 5(h)(4) of TSCA, 15 U.S.C. § 2604(h)(4). Forty C.F.R. § 723.50 addresses chemical substances manufactured in quantities of 10,000 kilograms or less per year, and/or chemical substances with low environmental release and human exposure.
21. Per the Low Volume Exemption (“LVE”) under 40 C.F.R. § 723.50(e)(1), an applicant must submit to EPA an exemption application on EPA Form No. 7710-25 via CDX using e-PMN software in the manner set forth in this paragraph at least thirty (30) days before the manufacture of the new chemical substance begins.
22. Per 40 C.F.R. § 723.50(j)(4), a person who manufactures a new chemical substance pursuant to an LVE, a person must submit a new LVE notice before that person manufactures the chemical substance subject to an LVE in an annual production volume above the volume designated by the LVE.
23. Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B), provides that the Treasury shall refuse entry of “any chemical substance or mixture offered for such entry if” it is offered for entry in violation of a rule or order under Section 5, 15 U.S.C. § 2604. Pursuant to 40 C.F.R. §

707.20(b)(2)(i), importers must sign the following statement for each import of a chemical substance subject to TSCA: “I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA.”

24. “Person” as defined by 40 C.F.R. § 720.3(x) means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency or instrumentality of the Federal Government.
25. “Manufacture” as defined by Section 3(9) of TSCA, 15 U.S.C. § 2602(9) means to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States), produce, or manufacture.
26. A “chemical substance” is defined by Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as “any organic or inorganic substance of a particular molecular identity”
27. “New chemical substance” as defined by Section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v) means any chemical substance which is not included in the chemical substance list compiled and published under Section 8(b) of TSCA, 15 U.S.C. § 2607(b).
28. Section 15 of TSCA, 15 U.S.C. § 2614, makes it a prohibited act for any person to fail or refuse to comply with any requirement of TSCA or any rule promulgated, order issued, or consent agreement entered into under this title.
29. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes EPA to assess a civil penalty up to \$37,500 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$48,512 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023.

III. STIPULATED FACTS

30. Complainant hereby states and alleges that Respondent has violated Section 313 of EPRCA, 42 U.S.C. § 11023, and Section 15 of TSCA, 15 U.S.C. § 2614 and the federal regulations promulgated thereunder.
31. At all relevant times to this matter, Respondent was a corporation formed in the state of Connecticut with its US headquarters located at 6 Commerce Drive, Danbury, Connecticut 06810, and was a “person” as defined in EPCRA Section 329(7), 42 U.S.C. § 11049(7), and 40

C.F.R. §§ 710.3 and 720.3(x) and, as such, was subject to Section 313 of EPCRA, 42 U.S.C. § 11023, and TSCA, 15 U.S.C. § 2601 *et seq.* and the regulations promulgated thereunder.

32. At all relevant times to this matter, Respondent owned, controlled and/or operated a facility in Danbury, Connecticut. The Danbury facility buildings are located at 21 Finance Drive, Danbury, CT 06810 and at 27 Augusta Drive Danbury, CT 06810 (hereinafter, referred to as the Facility). As these buildings are adjacent to each other, they are a “facility” as defined by 40 C.F.R. § 372.3 for Toxics Release Inventory (“TRI”) reporting purposes.
33. For the reporting years 2018, 2019, 2020, and 2021, the Facility was a “covered facility” with respect to methanol, formic acid, and n-hexane, because it met the criteria in Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30 as follows:
- a. The Facility had 10 or more employees during 2018, 2019, 2020, and 2021;
 - b. The Facility was in a North American Industry Classification System (NAICS) code (specifically 325199, as set forth in 40 C.F.R. 372.23); and
 - c. Methanol, a toxic chemical listed in 40 C.F.R. § 372.65, was “otherwise used” at the Facility in amounts greater than 10,000 pounds, the relevant threshold given in 40 C.F.R. § 372.25.
 - d. Formic acid, a toxic chemical listed in 40 C.F.R. § 372.65, was “processed” at the Facility in amounts greater than 25,000 pounds, the relevant threshold given in 40 C.F.R. § 372.25.
 - e. Formic acid, a toxic chemical listed in 40 C.F.R. § 372.65, was “otherwise used” at the Facility in amounts greater than 10,000 pounds, the relevant threshold given in 40 C.F.R. § 372.25.
 - f. N-hexane, a toxic chemical listed in 40 C.F.R. § 372.65, was “otherwise used” at the Facility in amounts greater than 10,000 pounds, the relevant threshold given in 40 C.F.R. § 372.25.
34. At all times relevant to this matter, Respondent manufactured, imported, processed, or distributed in commerce, five chemical substances identified as Chemicals A, B, C, D, and E¹ (collectively hereinafter referred to as the Chemical Substances) or mixtures containing these chemicals, or in the past had manufactured, imported, processed, or distributed in commerce the Chemical Substances or mixtures containing these Chemical Substances as those terms are defined in Sections 3(2), (5), (9), (10), and (13) of TSCA, 15 U.S.C. § 2602(2), (5), (9), (10), and (13) respectively, and 40 C.F.R. § 720.3(e), (i), (q), (u), and (aa).

¹ Respondent has claimed the identity of Chemicals A, B, C, D, and E as TSCA confidential business information (“CBI”).

35. At all times relevant to this matter, each of the Chemical Substances were “new chemical substances” as that term is defined in Section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
36. Respondent received LVE application approvals for Chemicals A and B on December 16, 1993, and Chemical E on November 30, 1992.
37. The annual production volume specified in the LVEs that were approved on December 16, 1993 and November 30, 1992 for Chemicals A, B, and E were each limited to 1,000 kilograms.
38. On July 19, 2023, EPA representatives conducted an inspection pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, and Section 313 of EPCRA, 42 U.S.C. § 11023, of the Danbury, Connecticut facility and requested records related to assessing Respondent’s compliance with Section 313 of EPCRA and Section 15 of TSCA.
39. EPA’s findings of fact set forth below are based in part upon the information EPA obtained during those inspections (including through a review of documents).
40. The Parties’ discussions have resulted in the agreement contained herein, which includes the conditions described in Section V, the payment of the civil penalty described in Section VI, and the terms of settlement described in Section VII of this CAFO.

IV. EPA’S FINDINGS OF FACT AND LAW

EPCRA

Count 1 – Failures to Accurately Report Methanol in Violation of Section 313(a) of EPCRA

41. Paragraphs 1-17 and 30-40 are incorporated here by reference.
42. During reporting years 2018, 2019, 2020, and 2021, Respondent “otherwise used,” as that term is defined in 40 C.F.R. § 372.3, over 10,000 pounds of methanol at the Facility.
43. During the reporting years 2018, 2019, 2020, and 2021, Respondent also manufactured methanol, although not in amounts that exceed the threshold for reporting manufactured methanol.
44. Respondent timely filed Form R for methanol for reporting years 2018, 2019, 2020, and 2021. However, Respondent failed to submit a complete and correct Form R for each of those reporting years in the following ways:
 - a. For reporting years 2018, 2019, 2020, and 2021, Respondent failed to indicate in Section 3 of each respective year’s Form R, all activities and uses of methanol—specifically, methanol manufactured for reporting years 2018, 2019, 2020, and 2021.

- b. For reporting year 2019, Respondent failed to accurately report the quantities of methanol waste managed or transferred off-site in Section 6.2 and quantities used for energy recovery off-site 8.3 of Form R.
45. Respondent's failure to indicate all appropriate categories of chemical use (i.e., methanol manufactured) and/or completely and accurately report quantities of methanol waste managed or transferred for reporting years 2018, 2019, 2020 and 2021 constitute four separate violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

Count 2 – Failures to Accurately Report Formic Acid in Violation of Section 313(a) of EPCRA

46. Paragraphs 1-17 and 30-40 are incorporated here by reference.
47. During reporting year 2018, Respondent “otherwise used,” as that term is defined in 40 C.F.R. § 372.3, over 10,000 pounds of formic acid at the Facility.
48. During Reporting year 2018, Respondent also processed formic acid, although not in amounts that exceed the threshold for reporting manufactured formic acid.
49. During reporting years 2020 and 2021, Respondent “processed,” as that term is defined in 40 C.F.R. § 372.3, over 25,000 pounds of formic acid at the Facility.
50. Respondent timely filed Form R for formic acid for reporting years 2018, 2020, and 2021. However, Respondent failed to submit a complete and correct Form R for each of those reporting years in the following ways:
- a. For reporting year 2018, Respondent failed to indicate in Section 3 all activities and uses of formic acid—specifically, formic acid processed in reporting year 2018.
 - b. For reporting years 2020 and 2021, Respondent failed to accurately report the quantities of formic acid waste managed or transferred off-site in Sections 6.2 and 8.3 of the Form R.
51. Respondent's failure to identify all appropriate categories of use (i.e., formic acid processed) and/or completely and accurately report quantities of waste managed or transferred off-site for formic acid for reporting years 2018, 2020 and 2021, constitute three separate violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

Count 3 – Failures to Accurately Report n-Hexane in Violation of Section 313(a) of EPCRA

52. Paragraphs 1-17 and 30-40 are incorporated here by reference.
53. For reporting years 2018, 2020, and 2021, Respondent “otherwise used,” as that term is defined in 40 C.F.R. § 372.3, over 10,000 pounds of n-hexane at the Facility.
54. Respondent timely filed Form R for n-hexane for reporting years 2018, 2020, and 2021. However, Respondent failed to submit a complete and correct Form R for each of those

reporting years by failing to accurately report the quantities of n-hexane otherwise used in the Sections 6.2 and 8.3 of Form R.

55. Respondent's failure to completely and accurately report quantities of n-hexane waste managed or transferred off-site in Section 6.2 and quantities used for energy recovery off-site 8.3 of Form R for reporting years 2018, 2020 and 2021, as set forth above, constitute three separate violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

TSCA

Count 4 – Violations of Section 5(a)(1) of TSCA

56. Paragraphs 1-2 and 18-40 are incorporated here by reference.
57. Between the calendar years 2018 and 2023, Respondent manufactured Chemical A at least 135 times, Chemical B at least 61 times, and Chemical E at least 41 times (with relevant dates and quantities claimed as CBI) before submitting PMNs or new LVE applications for these Chemicals.
58. Respondent imported Chemical C between calendar years 2018 and 2022 at least 13 times, and manufactured Chemical D between the calendar years 2018 and 2023 at least 75 times (with relevant dates and quantities claimed as CBI) prior to submitting PMNs or LVE applications for these Chemicals.
59. Chemicals A, B, C, D, and E were not included on the TSCA Inventory at the time of manufacture (import), and therefore, are "new chemical substances" as defined under Section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
60. Respondent's failure to submit PMNs or LVE applications at least ninety (90) days before manufacturing (importing) Chemicals A, B, C, D, and E constitute failures to comply with Section 5 of TSCA, 15 U.S.C. § 2604, which are prohibited acts under Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

Count 5 – Violations of Section 13(a)(1)(B) of TSCA

61. Paragraphs 1-2 and 18-40 are incorporated here by reference.
62. On August 17, 2023, Respondent informed EPA that it had imported Chemical C between calendar years 2018 and 2022 at least 13 times (with relevant dates and quantities claimed as CBI) prior to submitting a PMN or LVE application for this Chemical.
63. Respondent's failure to submit proper certifications under Section 13 of TSCA prior to importing Chemical C constitute failures to comply with Section 13 of TSCA, which are prohibited acts under Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

V. CONDITIONS

64. Respondent and EPA have agreed, in compromise of the civil penalty that otherwise may be imposed herein, to the conditions of settlement described in Paragraphs 65-74.

Development, Implementation, and Evaluation of Environmental Management System

65. Within 270 days of the Effective Date, Respondent will develop and implement a compliance focused TSCA Environmental Management System (“EMS”) and shall submit to the EPA an “Environmental Management System Manual” which describes and documents the comprehensive EMS and contains an EMS implementation schedule for each of the described systems and subsystems not already fully implemented. The Environmental Management System Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that compose the facility-wide EMS framework, and respective management systems, subsystems, and tasks for: 1) the 12 Key Elements as detailed in EPA’s June 2005 “Compliance-Focused Environmental Management System-Enforcement Agreement Guidance” (“EPA EMS Guidance”), attached as Appendix A; and 2) International Standards of Organization (“ISO”) 14001:2015 (Third edition), Environmental management systems – Requirements with guidance for use. In developing the EMS, Respondent will also review the following Areas of Concern detailed on page 14 of the September 19, 2023 TSCA Inspection Report for the Facility and incorporate them as appropriate into the EMS:

- a. Chemicals manufactured, processed, or used under the TSCA research and development exemption are used in accordance with 40 C.F.R. § 720.36(d); and
- b. Isolated intermediates are manufactured in accordance Section 5 PMN requirements under 40 C.F.R. § 720.22.

66. EMS Evaluation. Within 365 days of implementation of the EMS, as part of Respondent’s implementation of its EMS and consistent with Element 11 of the EPA EMS Guidance, Respondent will conduct an evaluation of the EMS and translate assessment results into EMS improvements (the “EMS Evaluation”). The EMS Evaluation will evaluate the adequacy of Respondent’s EMS and EMS Manual and identify areas of concern from top management down, throughout each major organizational unit and responsibilities under the EMS Manual. The EMS Evaluation shall be conducted in accordance with ISO 19011, and shall determine the following:

- a. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;
- b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained;
- c. The adequacy of Respondent’s internal self-assessment procedures for programs and tasks comprising the EMS;

- d. Whether Respondent is effectively communicating environmental requirements to affected parts of the organization, or those working on behalf of the organization;
 - e. Whether further improvements should be made to the EMS and EMS Manual to better conform with ISO 14001 and the EMS Guidance;
 - f. Whether there are observed deviations from Respondent's written requirements or procedures; and
 - g. Whether continual improvement is occurring.
67. EMS Evaluator. Respondent will retain at least one qualified third party ("EMS Evaluator") to assist Respondent in its evaluation of the EMS described in Paragraphs 65-66. The EMS Evaluator will meet the following criteria:
- a. The EMS Evaluator will have experience in developing and implementing EMSes in accordance with ISO 14001:2015;
 - b. The EMS Evaluator will have expertise and competence in Title I of TSCA and its implementing regulations;
 - c. The EMS Evaluator and their personnel have not conducted research, development, design, construction, financial, engineering, legal, consulting, or other advisory services for the Respondent within three years prior to the Effective Date of this CAFO, except to the extent the EMS Evaluator or their personnel assisted Respondent in developing or implementing the EMS or EMS Manual as described in Paragraph 65. However, an EMS Evaluator with personnel who, before working for the EMS Evaluator, conducted research, development, design, construction, or consulting services for Respondent (as an employee or contractor) may meet the requirements of independence by ensuring that these personnel do not participate on, manage, or advise the EMS Evaluator with respect to any obligations under the CAFO that the EMS Evaluator is selected to perform. For each EMS Evaluator, Respondent must provide descriptions of any previous work contracts, or financial relationship that the EMS Evaluator has had with Respondent;
 - d. The EMS Evaluator was not involved in developing or implementing Respondent's programs and procedures for complying with TSCA or the regulations promulgated thereunder, except to the extent the EMS Evaluator or their personnel assisted Respondent in developing or implementing the EMS or EMS Manual as described in Paragraph 65; and
 - e. Notwithstanding subparagraph (d) of this Paragraph, to the extent that the EMS Evaluator or their personnel assisted in the development or implementation of the EMS or EMS Manual, the specific personnel that assisted in the development or implementation of the EMS or EMS Manual will not be involved in the EMS Evaluation. However, personnel of the EMS Evaluator who did not assist in the

development or implementation of the EMS or EMS Manual are permitted to be involved in the EMS Evaluation.

EMS Implementation: Facility Compliance Audit

68. Facility Audit. Within 365 days of implementation of the EMS, as part of Respondent's implementation of its EMS and consistent with Element 11 of the EPA EMS Guidance, Respondent will retain at least one individual to serve as an independent auditor to conduct a facility compliance audit ("Facility Audit").
69. Qualifications of the Independent Auditor. At least one of the auditors ("Facility Auditor") that Respondent retains to complete the facility compliance audit referenced in Paragraph 68 will meet the following criteria:
- a. The Facility Auditor shall have demonstrated experience and expertise in chemistry, chemical nomenclature used in the TSCA inventory, and the application of TSCA compliance assessments, including, but not limited to, Sections 4, 5, 6, 8, 12, 13, and 15 of TSCA and the regulations promulgated thereunder;
 - b. The Facility Auditor and their personnel have not conducted research, development, design, construction, financial, engineering, legal, consulting, or other advisory services for the Respondent within three years prior to the Effective Date of this CAFO. However, a Facility Auditor with personnel who, before working for the Facility Auditor, conducted research, development, design, construction, or consulting services for Respondent (as an employee or contractor) may meet the requirements of independence by ensuring that these personnel do not participate on, manage, or advise the Facility Auditor with respect to any obligations under the CAFO that the Facility Auditor is selected to perform. For each Facility Auditor, Respondent must provide descriptions of any previous work contracts, or financial relationship that the Facility Auditor has had with Respondent;
 - c. The Facility Auditor was not involved in developing or implementing Respondent's programs and procedures for complying with TSCA or the regulations promulgated thereunder;
 - d. The Facility Auditor is not evaluating any aspect of the facility's design, engineering, or mechanical integrity he/she developed or implemented; and
 - e. Notwithstanding subparagraphs (b)-(d) of this Paragraph, the Facility Auditor and the EMS Evaluator may be the same individual(s) and involve the same personnel, provided that these parties meet both the respective qualifications for serving as a Facility Auditor and EMS Evaluator as prescribed in this CAFO.

70. Within 10 business days of selecting the Facility Auditor, Respondent shall submit to the EPA the name of the Facility Auditor selected and sufficient documentation demonstrating that each of the criteria in Paragraph 69 are satisfied. If EPA disagrees that the Facility Auditor meets the criteria in Paragraph 69, EPA shall notify Respondent within 10 business days of receipt of Respondent's notice. If EPA disagrees that the Facility Auditor meets the qualifications in Paragraph 69, Respondent shall have an additional 30 business days to select a new Facility Auditor. The criteria of this Paragraph shall be repeated until EPA does not notify Respondent that it disagrees that Respondent's choice of Facility Auditor satisfies the requirements of Paragraph 69.
71. Respondent and the Facility Auditor will understand and agree that:
- a. The Facility Auditor will not be permitted to provide any other commercial, business, or voluntary services to Respondent for a period of at least two years following the Facility Auditor's submittal of its final report; and
 - b. Respondent will not provide future employment to the Facility Auditor or persons who managed, conducted, or otherwise participated in the audits for a period of at least two years following the Facility Auditor's submittal of their final report.
72. Notwithstanding Paragraphs 69 and 70, the Facility Auditor may assemble an auditing team to be led by the Facility Auditor. The auditing team may include other employees of the Facility Auditor's firm or subcontractors meeting the criteria of Paragraphs 69 and 70 as well as Respondent personnel. However, any Respondent personnel participants in the auditing team shall not contribute to drafting of the Facility Report described in Paragraph 74.
73. Respondent will ensure that the Facility Auditor leading the review:
- a. Certifies that he/she satisfies the requirements specified in Paragraphs 69 and 70;
 - b. Maintains contemporaneous records used in support of preparing the Facility Report;
 - c. Prepares the Facility Report. Any of Respondent's personnel that participated in the review team will not draft the Facility Report but will be permitted to provide factual information to the Facility Auditor and review drafts of the either report for factual accuracy; and
 - d. Provides a copy of the final Facility Report to Respondent and EPA.
74. Within 60 days after the completion of the Facility Audit, the Facility Auditor will provide a Facility Report, including any Findings and Deviations, to Respondent and EPA. The Facility Report will document:
- i. The date(s) of the review and describe how the review was conducted;

- ii. Identify the names of all participants of the review team, including names, titles, employers and/or affiliations, and summaries of qualifications;
 - iii. Describe all the types of information and records reviewed, and the equipment, processes, practices, structures, and other items reviewed, observed, or evaluated;
 - iv. Document the Facility Auditor's evaluation and findings as to each chemical substance subject to Sections 4, 5, 6, 8, 12, or 13 of TSCA and the regulations promulgated thereunder and describe the basis of those findings; and
 - v. Provide a specific recommendation as to how each deviation from the TSCA requirements should be corrected to achieve conformity with the requirements.
75. Within 30 days of completion of all conditions detailed in Paragraphs 64-74, Respondent will submit to EPA itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, wire transfer records, and/or internal expense records that specifically identify and substantiate any expenses incurred in carrying out the conditions detailed in Paragraphs 64-74, including the retention of any independent third-parties as well as internal costs incurred by using Respondent's own personnel in fulfilling these conditions.

VI. CIVIL PENALTY

76. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and consistent with Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1), and pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and taking into account the relevant statutory penalty criteria, the applicable penalty policies, and Respondent's cooperation and other relevant factors, EPA determined that a Gravity Based Penalty of EIGHT HUNDRED, SEVENTY-ONE THOUSAND, EIGHT-HUNDRED AND NINETY-NINE DOLLARS (\$871,899) is appropriate.
77. Pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), and 40 C.F.R. § 22.31, EPA agrees to remit TWO-HUNDRED THOUSAND DOLLARS (\$200,000) of the civil penalty for the TSCA violations alleged herein through the effective date of this CAFO, conditioned upon Respondent's compliance with all terms and conditions set forth in Section V of this CAFO, to EPA's reasonable satisfaction.
78. Respondent agrees to pay a civil penalty in the amount of SIX HUNDRED, SEVENTY-ONE THOUSAND, EIGHT-HUNDRED AND NINETY-NINE DOLLARS (\$671,899) for the alleged violations identified herein within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Clerk of the Environmental Appeals Board ("Effective Date").

79. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on EPA websites: <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

80. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket numbers of this Agreement, TSCA-HQ-2024-5006 and EPCRA-HQ-2024-5006.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Emilio Cortes
Clerk of the Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Valarie Franklyn, Environmental Engineer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Franklyn.Valarie@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

81. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and

all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed each subsequent thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, and other charges, that remain delinquent more than ninety (90) days.
82. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions may include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
 - d. Per 15 U.S.C. § 2615(a), the Attorney General may bring a civil action in the appropriate district court to recover the full remaining balance of the debt plus

interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

83. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
84. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
85. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center to Milton Wise at Wise.Milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date; and

- ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

VII. TERMS OF SETTLEMENT

86. Whenever this CAFO requires Respondent to give notice or submit reports, information, or other documents to EPA, such information shall contain the date, the official's signature, and the official's title and shall be accompanied by the following certification and such information shall be submitted to Valarie Franklyn as described in Paragraph 80.b under this Agreement:

To the best of my knowledge and belief after due inquiry, under penalty of law, I certify that the information contained in and accompanying this [fill in type of submission] is true, accurate, and complete.

87. Recordkeeping. Respondent shall maintain all documents required under this CAFO, including the EMS Manual, the Facility Report, and related documents for five years after they are created and must produce them for inspection, copying or as otherwise required under Section 11 of TSCA, 15 U.S.C § 2610.

Stipulated Penalties

88. The following stipulated penalties accrue per day for missing the deadlines specified in Paragraphs 65, 66, 67, 68, 70, 74, and 75:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,500	15th through 30th Day
\$5,000	31st Day and beyond

89. After submission of the records required pursuant to Paragraph 75, if Respondent’s expenses incurred for implementation of Paragraphs 65-74 is less than the remitted penalties specified in Paragraph 77 and a written demand has been made by EPA pursuant to Paragraph 90 below, Respondent agrees to pay the difference between the total expenses incurred in the implementation of Paragraphs 65-74 and the remitted penalty amount specified in Paragraph 77. To the extent Respondent submits internal expense records pursuant to Paragraph 75, those internal expenses may only cover up to fifty percent (50%) of the remitted penalty amount specified in Paragraph 77, though no such limit shall apply to expenses regarding the retention of independent third-parties.

90. Subsequent to the submission of the documentation of expenses incurred described in Paragraph 75, EPA will make a written demand for civil penalties for any applicable stipulated

penalties associated with missed deadlines (Paragraph 88) and remitted penalties (Paragraph 89). Respondent will pay any applicable stipulated penalties, owing to the United States, not more than thirty (30) calendar days after receipt of the written demand from EPA. Except as otherwise specified in this Paragraph, payment of the penalty amounts specified in Paragraphs 88-89 will be made in accordance with the directions described in Paragraphs 79-85.

Other Terms

91. As a condition of this Agreement, Respondent may process, use, and distribute any existing stocks of Chemicals A, B, C, D, and E in accordance with the applicable terms and conditions of the approved TSCA LVEs (dates of approval being: March 7, 2024 for Chemical A; February 1, 2024 for Chemical B; December 3, 2024 for Chemical C; January 1, 2024 for Chemical D; and February 1, 2024 for Chemical E).
92. If Respondent chooses to dispose of existing stocks of Chemicals A, B, C, D, or E, Respondent will dispose of any unused portion of its existing stocks in accordance with applicable federal and state requirements. Respondent should coordinate with the applicable state(s) where disposal may occur to determine if additional requirements or a preferred approach (e.g., incineration) should be considered before disposing of the applicable Chemical Substance.
93. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent, and approval of the Environmental Appeals Board, except as specified in Paragraph 94.
94. Deadlines set forth in this Section, for submittals or performance may be extended by the Branch Manager of the EPA's Office of Enforcement and Compliance Assurance's Chemical Risk and Reporting Enforcement Branch, at his or her discretion, without further amendment of this Order. The EPA will provide Respondent with written confirmation and documentation of any such extensions of time.

VIII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

95. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO shall only resolve Respondent's liability for Federal civil penalties for the violations and facts specifically alleged above.
96. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.
97. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board, except as specified in Paragraph 94.

98. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, nor any violations of TSCA or EPCRA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
99. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
100. This settlement is conditioned upon the thoroughness and accuracy of Respondent's representations to the EPA in this matter.
101. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form or is not approved in such identical form by the EAB.
102. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and EPCRA, and the regulations promulgated thereunder.
103. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of TSCA and EPCRA and other federal, state, or local laws or statutes. Nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
104. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
105. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
106. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by the EAB.

IX. OTHER MATTERS

107. Respondent certifies that, to its knowledge, it is currently operating the Facility in compliance with TSCA and EPCRA and their implementing regulations.

108. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement.
109. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
110. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail, at: legal@bedoukian.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.
111. This Consent Agreement shall not dispose of the proceeding without a final order from the Environmental Appeals Board ratifying the terms of this Consent Agreement. This Consent Agreement shall be effective upon the filing of the Final Order by EPA's Environmental Appeals Board. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
112. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and completed and provided EPA with copies of all deliverables required to be submitted to EPA pursuant to this CAFO.
113. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
114. The Parties agree to bear their own costs and attorney's fees.

WE HEREBY AGREE TO THIS:

For Respondent:



Ryan J. Carra
Beveridge & Diamond
1900 N Street, NW, Suite 100
Washington, D.C. 20036
Counsel for Bedoukian Research Inc.

Date: January 14, 2025

For Complainant:

**GREGORY
SULLIVAN**

Digitally signed by
GREGORY SULLIVAN
Date: 2025.01.16 13:03:13
-05'00'

Gregory Sullivan
Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

**Simmons
, Nicole L**

Digitally signed by
Simmons, Nicole L
Date: 2025.01.17
08:52:41 -05'00'

N. Lindsay Simmons, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

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Appendix A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS AND TRAINING

EPA-330/9-97-002R

**Compliance-Focused Environmental
Management System -
Enforcement Agreement Guidance**

August 1997
Revised January 2000
Revised December 2001
Revised August 2002
Revised June 2005

Steven W. Sisk

NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
Diana A. Love, Director
Denver, Colorado

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INTRODUCTION

SYNOPSIS

Since the late 1980s, civil multimedia compliance investigations conducted by the EPA National Enforcement Investigations Center (NEIC) have increasingly involved identifying causes of observed noncompliance. In many cases, the causes arise from inadequate environmental management systems (EMSs).¹ NEIC, in response, developed key elements for a compliance-focused EMS (CFEMS) model, which have been used as the basis for EMS requirements in many enforcement settlement agreements. The purpose of this guidance is to present those key elements and to show, through the "Model Settlement Agreement Language" [Appendix A], how the elements are typically incorporated into such agreements.

BACKGROUND

EPA has determined that properly designed and implemented EMSs can help promote positive environmental outcomes. The EPA Office of Enforcement and Compliance Assurance (OECA) supports the Agency's EMS policy, as expressed in the *USEPA EMS Position Statement*, to encourage the widespread use of EMSs across a range of organizations and settings, with particular emphasis on adopting EMSs to achieve improved environmental performance, including compliance, pollution prevention, and continual improvement in all areas, regulated and unregulated.²

OECA strongly encourages all organizations interested in focusing their EMSs on compliance to reference the CFEMS model as a potentially useful tool for supplementing existing EMS standards. However, OECA does not advocate that EMSs associated with voluntary EPA programs [e.g., National Environmental Performance Track (NEPT) and the Public Entity Environmental Management System Resource (PEER) Center/Local Government Program³], need to incorporate the CFEMS 12 elements. The CFEMS model has been developed for application in

¹ *The International Organization for Standardization (ISO) defines an EMS as "that part of the overall management system which includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing, and maintaining [the organization's] environmental policy." The EMS provides the structure by which specific activities related to environmental protection and compliance can be effectively and efficiently carried out.*

² *The USEPA Position Statement on EMSs (EMS Position Statement; May 15, '02) is available at <<http://www.epa.gov/ems/policy/position.htm>>.*

³ *The PEER Center is supported by a cooperative agreement between EPA's Office of Water and the Global Environment and Technology Foundation. OECA has supported and provided funding for this program. The PEER Center has developed a national clearinghouse of EMS information with a focus on municipalities. In July 2002, EPA also designated eight Local Resource Centers around the country to provide assistance to local governments interested in adopting EMSs. The PEER Center website may be accessed at <<http://www.peercenter.net/>>.*

enforcement actions as injunctive relief for defendants with violations caused by management failures. Increasingly, however, we are learning that organizations, domestic and international, are consulting the *CFEMS* Guidance in enhancing their EMSs or voluntary EMS guidelines to better address internal and external compliance concerns. OECA encourages this as beneficial to both the implementing organizations and external stakeholders.

EPA's approach to EMSs in enforcement actions (as opposed to when EPA is promoting EMSs through voluntary programs, compliance assistance, or other non-enforcement means) is to focus on seeking the appropriate injunctive relief to return violators to compliance and minimize or eliminate the potential for repeat violations.

To achieve maximum benefit from the *CFEMS* elements, the overall EMS, in which they are incorporated, should embody the "plan, do, check, and act" model for continual improvement and address both regulated and unregulated aspects and impacts. Consequently, the *CFEMS Guidance* is intended to supplement, not replace, EMS standards such as ISO 14001 developed by voluntary consensus standards bodies. The *CFEMS* 12 elements support the broad, multimedia, beyond-compliance approaches that are the hallmarks of an effective, functioning EMS. They supplement existing EMS voluntary consensus standards by filling potential compliance-related gaps.

Settlement agreements that require EMS improvements typically require that the organization conduct an initial review of its current environmental management practices, followed by development of a comprehensive *CFEMS* that must be documented in a manual. The EMS manual must contain overarching policies, procedures, and programs that compose the facility-wide (or organization-wide) EMS framework, and describe respective management systems, subsystems, and tasks for the 12 key elements. After the organization has had sufficient time to implement and refine the EMS (usually 1 to 3 years), the agreement should require at least one EMS audit by an independent third-party auditor to verify implementation, with results reported to both the organization and EPA. However, additional audits, including compliance audits, are often required, as individual circumstances dictate. The audits also serve to promote further EMS improvement and more effective implementation.

The intended result of this approach is twofold: first, to have the organization develop an EMS that will both improve its compliance with applicable environmental requirements and, second, to improve its environmental performance through setting and achieving the organization's environmental targets and objectives.

The 12 key elements of a CFEMS addressed in this guide were compiled from a number of sources, as mentioned in previous revisions, and notably include: EMS assessment protocols developed by Deloitte and Touche LLP of San Francisco for the Global Environmental Management Initiative (1992) and an industrial client (1994); and ISO 14001 “Environmental management systems - Specification with guidance for use” (1996 and 2004).

The current revision involved expanding the Introduction to better describe the relationship of the CFEMS Guidance to EPA’s overall EMS policy and its consistency with that policy, as well as revising the elements and the model settlement agreement language in Attachments A and B (new).⁴

COMPLIANCE-FOCUSED ENVIRONMENTAL MANAGEMENT SYSTEM ELEMENTS

1. Environmental Policy

- a. This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, “environmental requirements”), minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants, and continual improvement in environmental performance. The policy should also state management’s intent to provide adequate personnel and other resources for the EMS.

2. Organization, Personnel, and Oversight of EMS

- a. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental staff in implementing and sustaining the EMS (e.g., could include position descriptions and/or performance standards for all environmental department personnel, and excerpts from others having specific environmental duties, and regulatory compliance responsibilities).
- b. Includes organization charts that identify units, line management, and other individuals having environmental duties and regulatory compliance responsibilities.
- c. Includes ongoing means of communicating environmental issues and information among the various levels and functions of the organization, to include all persons working for or on behalf of the organization (e.g., on-site service providers and contractors who function as *de facto* employees), and for receiving and addressing their concerns.

⁴ *The 12 elements are closely inter-related components of an EMS for which subsystems and procedures must be developed and fully integrated if the entire program is to be effective. They are usually included in settlement agreements as a complete group; however, individual elements may need to be modified to reflect site-specific conditions and circumstances.*

3. Accountability and Responsibility

- a. Specifies accountability and environmental responsibilities of organization's managers, and managers of other organizations acting on its behalf for environmental protection and risk reduction measures, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.
- b. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards, and procedures.
- c. Describes potential consequences for departure from specified operating procedures, including liability for civil/administrative penalties imposed as a result of noncompliance.

4. Environmental Requirements

- a. Describes process for identifying potentially applicable environmental requirements; interpreting their applicability to specific operations, emissions, and waste streams; and effectively communicating those applicable environmental requirements to affected persons working for or on behalf of the organization.
- b. Describes a process for developing, implementing and maintaining ongoing internal compliance monitoring to ensure that facility activities conform to applicable environmental requirements. Compliance monitoring shall include inspections and measurements, as appropriate.
- c. Describes procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS (i.e., regulatory "change management").
- d. Describes a procedure for communicating with regulatory agencies regarding environmental requirements and regulatory compliance.

5. Assessment, Prevention, and Control

- a. Identifies an ongoing process for assessing operations, for the purposes of preventing, controlling, or minimizing reasonably foreseeable releases, environmental process hazards, and risks of noncompliance with environmental requirements. This process shall include identifying operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.
- b. Describes process for identifying operations and activities where documented operating criteria, such as standard operating procedures (SOPs), are needed to prevent noncompliance or unplanned/unauthorized releases of hazardous or harmful contaminants, and defines a uniform process for developing, approving and implementing the documented operating criteria.
- c. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in (a) above, to check for malfunctions,

deterioration, worker adherence to operating criteria, unusual situations, and unauthorized or unplanned releases.

- d. Describes a “management of change” process to ensure identification and consideration of environmental requirements, the environmental aspects/impacts, and potential operator errors or deliberate malfeasance during planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, maintenance activities, and products.

6. Environmental Incident and Non-compliance Investigations

- a. Describes standard procedures and requirements for internal and external reporting of environmental incidents and noncompliance with environmental requirements.
- b. Establishes procedures for investigation, and prompt and appropriate correction of noncompliance. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.
- c. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.

7. Environmental Training, Awareness, and Competence

- a. Identifies specific education and training required for organization personnel or those acting on its behalf, as well as process for documenting training provided
- b. Describes program to ensure that organization employees or those acting on its behalf are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.
- c. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.
- d. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.

8. Environmental Planning and Organizational Decision-Making

- a. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.
- b. Requires establishing, on an annual basis, written targets, objectives, and action plans for improving environmental performance, by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions that reduce the risk of noncompliance with environmental requirements and minimize the

potential for unplanned or unauthorized releases of hazardous or harmful contaminants.

9. Maintenance of Records and Documentation

- a. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and, where appropriate, security measures to prevent their unauthorized disclosure, and protocols for responding to inquiries and requests for release of information.
- b. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.
- c. Specifies document control procedures.

10. Pollution Prevention

- a. Describes an internal process or procedure for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including incentives to encourage material substitutions. Also includes mechanisms for identifying candidate materials to be addressed by the pollution prevention program and tracking progress.

11. Continuing Program Evaluation and Improvement

- a. Describes program for periodic (at least annually) evaluation of the EMS, which specifies a process for translating assessment results into EMS improvements. The program shall include communicating findings and action plans to affected organization employees or those acting on its behalf.
- b. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements by an independent auditor(s). Audit results are reported to upper management and instances of noncompliance are addressed through the process described in element 6 above.

12. Public Involvement/Community Outreach

- a. Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.

APPENDIX A

MODEL SETTLEMENT AGREEMENT LANGUAGE FOR EMS IMPROVEMENTS
(7 pages)

MODEL SETTLEMENT AGREEMENT LANGUAGE FOR EMS IMPROVEMENTS

- I. **Definitions** *[includes only those definitions that are specifically relevant to the EMS Improvement provisions]*
- (a) “Action Plan” shall mean a comprehensive plan for bringing the Facility, as defined below, into full conformance with the EMS provisions specified in Paragraph 20 of this Consent Decree and fully addressing all Audit Findings identified in the Audit Report.
 - (b) “Audit Finding” shall mean a written summary of all instances of nonconformance with the provisions of Paragraph 20 of this Consent Decree noted during the EMS audit, and all areas of concern identified during the course of the audit that, in the EMS Auditor’s judgement, merits further review or evaluation for potential EMS, environmental, or regulatory impacts.
 - (c) “Audit Report” shall mean a report setting forth the Audit Findings resulting from the audit of a Facility by the EMS Auditor, which meets all the requirements set forth in **Paragraph 18** of this Consent Decree.
 - (d) “EMS Auditor” (change made throughout document) shall mean the independent third-party hired by the COMPANY and approved by EPA to conduct an EMS audit at the Facility, and who meets the requirements set forth in Paragraph 8 of the Consent Decree.
 - (e) “Contractor” shall mean [contractor one name], any successor to [contractor one name] located on facility, [contractor two name], any successor to [contractor two name] located at the Facility and contractors providing the following services at the facility: [list of specific services such as asbestos removal, demolition, painting, waste handling, including vacuum truck operators, and construction].
 - (f) “Corrective Measures” shall mean those measures or actions appropriate to bring a Facility into full conformance with the EMS provisions of Paragraph 5 of this Consent Decree.
 - (g) “Environmental Requirements” shall mean all applicable federal, state, and local environmental statutes and regulations, including permits and enforceable agreements between the COMPANY and the respective environmental regulatory agency(ies).
 - (h) “Facility” as used in the term “the Facility” or in the term “the COMPANY’s Facility” shall mean the [COMPANY name], facility located at [facility address (e.g., 600 South Kipling Road in Denver, Colorado)].
 - (i) “EMS Consultant(s)” shall mean individual(s) meeting the requirements of Paragraph 1. below, who are selected and/or contracted to perform the Initial EMS Review and

Evaluation and/or assist the COMPANY in developing and implementing the EMS required by this Decree.

A. ENVIRONMENTAL MANAGEMENT SYSTEM

Initial Review

1. Within ten (10) days following entry of this Decree, the COMPANY shall provide to EPA, in writing, a notification with information concerning the person(s) or organization(s) identified by the COMPANY [the "Proposed EMS Consultant(s)"] to perform an evaluation (commonly called a "gap analysis") of any environmental management practices existing at the Facility (the "Initial Review and Evaluation"). The notification shall include: (a) the name, affiliation, and address of the Proposed EMS Consultant(s); (b) information demonstrating how each Proposed EMS Consultant(s) satisfies the EMS auditor qualification requirements of Table 1 in ISO 19011 (First edition, 2004-10-01) and has experience in developing and implementing an EMS; (c) information demonstrating that the team conducting the Initial EMS Review and Evaluation, in composite, has a working process knowledge of Facility or similar operations, and has a working knowledge of federal and state environmental requirements which apply to the Facility; and (d) evidence that the Proposed EMS Consultant(s) have at least a bachelor's degree from an accredited institution. The written notification submitted by the Company pursuant to this identify the schedule, including milestones, for conducting the Initial EMS Review and Evaluation.
2. EPA shall notify the COMPANY whether the Proposed EMS Consultants are qualified to perform the Initial Review and Evaluation relative to the standards set forth in the previous Paragraph. If EPA disapproves of the COMPANY's selection of any Proposed EMS Consultant, then the COMPANY shall submit to EPA the identity of different Proposed EMS Consultant(s) within thirty (30) days of the COMPANY's receipt of EPA's determination. Both the COMPANY's initial proposal and EPA's review of any different Proposed EMS Consultants shall be governed by **Paragraphs 1 and 2** of this Decree until such time as EPA notifies the COMPANY that these initial EMS Consultants are qualified to conduct the Initial Review and Evaluation.
3. The COMPANY shall direct the qualified initial EMS Consultant(s) identified pursuant to **paragraph 2** above to conduct and complete an Initial EMS Review and Evaluation for both COMPANY [and any on-site Contractor operations]. The designated EMS Consultant(s) shall review and evaluate the current environmental management practices and documents, using the elements set forth in **paragraph 5** below. The purpose is to identify where systems or subsystems have not been adequately developed or implemented, or need to be enhanced, or new management systems or subsystems developed, to adequately address the twelve elements set forth in Paragraph 5, below. The COMPANY shall require the EMS Consultants to prepare a report of the results of the Initial Review and Evaluation and provide such report

to the COMPANY within 90 days of the date that EPA notified the COMPANY that the initial EMS Consultants are qualified to conduct the Initial Review and Evaluation. This report shall also be provided to EPA, upon request.

Comprehensive EMS Development and Implementation

4. Based on the Initial EMS Review and Evaluation results and other information, the COMPANY, assisted by the EMS Consultant(s), shall develop, implement, and maintain a Comprehensive EMS for the Facility addressing, at a minimum, the 12 key elements presented in Paragraph 5, below. The purpose of developing the Comprehensive EMS is to assist the COMPANY in its efforts to comply with federal, state and local environmental requirements, as well as to improve environmental performance.
5. EMS Manual. Within nine (9) months of the date that EPA notified the COMPANY that the EMS Consultant(s) is qualified to assist in development of a Comprehensive EMS, the COMPANY shall submit to EPA for review and approval, an "Environmental Management System Manual" which describes and documents the Comprehensive EMS and contains an EMS implementation schedule for each of the described systems and subsystems not already fully implemented. The Environmental Management System Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that compose the facility-wide EMS framework, and respective management systems, subsystems, and tasks for the following elements:

NOTES: (a) The 12 key elements of the compliance-focused EMS are inserted here or referenced as an Appendix.

(b) If the COMPANY chooses ISO 14001:2004 (second edition) as the EMS model, then this language will need be modified to reference that model AND the supplementary provisions included in Appendix B need to be incorporated into the settlement agreement.

6. EPA shall approve the EMS Manual if it satisfactorily addresses the CFEMS elements. Subsequent to EPA's initial approval of the EMS Manual, the COMPANY may revise and/or update the EMS Manual for the Facility. Substantial revisions or updates to the EMS Manual made by the COMPANY before the EMS Audit required by Paragraph 16 below, shall be submitted to EPA for review and approval. Upon approval by EPA, the changes shall be incorporated into the EMS Manual. The EMS Manual as approved pursuant to this Paragraph shall be used during the EMS Audit as further described in Paragraphs 8 to 19, below.
7. Upon the COMPANY's receipt of EPA's approval of the EMS Manual, The COMPANY shall commence implementation of the EMS in accordance with the schedule contained in the EMS Manual. The COMPANY shall submit implementation status reports to EPA on a quarterly basis (i.e., reports due in

January, April, July, and October), beginning not earlier than sixty (60) days from receipt of EPA's approval of the manual. The status reports shall be due on the 15th day of the reporting month and every quarter thereafter until implementation is complete. [Status report details may be added here.]

EMS Audit

8. Within 1 year of EPA's approval of the EMS Manual, the COMPANY shall propose to EPA for approval, the selection of an independent EMS Auditor who (a) was not involved in the Initial EMS Review and Evaluation, (b) meets the qualification requirements of ISO 19011 (First edition, 2002-10-01); (c) has expertise and competence in the regulatory programs under federal and state environmental laws; and (d) has at least a bachelor's degree from an accredited institution. In addition, the Proposed EMS Auditor must be capable of exercising independent judgment and discipline in performing an EMS Audit at the Facility, as described in Paragraph 16, below. The EMS Auditor must have no direct financial stake in the outcome of the EMS Audit conducted pursuant to this Consent Decree. If the COMPANY has or has had any other contractual or financial relationship with the Proposed EMS Auditor, the COMPANY shall disclose to EPA such past or existing contractual or financial relationships when the Proposed EMS Auditor(s) is identified.
9. EPA shall notify the COMPANY whether the Proposed EMS Auditor meets the qualifications set forth in the previous Paragraph. If EPA determines that the Proposed EMS Auditor does not meet the qualifications set forth in the previous paragraph, or that past or existing relationships with the Proposed EMS Auditor would affect the EMS Auditor's ability to exercise the independent judgment and discipline required to conduct the EMS Audit, such Proposed EMS Auditor shall be disqualified and another EMS Auditor shall be proposed by the COMPANY within thirty (30) days of the COMPANY's receipt of EPA's determination.
10. Both the COMPANY's initial proposal and EPA's review of any different Proposed EMS Auditor shall be governed by **Paragraphs 8 and 9** of this Decree until such time as EPA notifies the COMPANY that the EMS Auditor(s) is qualified.
11. Within ten (10) business days of the date that EPA notifies the COMPANY of the approval of the Proposed EMS Auditor, the COMPANY shall retain the Proposed EMS Auditor, thereafter designated the "EMS Auditor," to perform an EMS Audit of the Facility as further described in **Paragraph 16** below.
12. THE COMPANY shall identify any and all site-specific safety and training requirements for the EMS Auditor(s), and shall ensure that the requirements are met prior to conducting the audit.
13. THE COMPANY shall require the EMS Auditor to prepare a draft EMS Audit Plan and provide it to THE COMPANY and EPA for review and comment. The audit criteria shall include the provisions set forth in **Paragraph 5**, the EMS Manual

- approved pursuant to **Paragraph 6** of this Decree, above, and any other EMS standards or criteria deemed appropriate by the COMPANY. The EMS Audit Plan shall provide for an evaluation of the adequacy of EMS implementation relative to the audit criteria, from top management down, throughout each major organizational unit at the Facility, and to identify areas of concern. The draft EMS Audit Plan shall be submitted within two (2) months after the EPA's approval of the EMS Auditor.
14. Within 30 days of receipt of EPA's comments the COMPANY shall direct the EMS Auditor to develop a final audit plan that incorporates EPA's comments which shall be followed during conduct of the EMS Audit performed pursuant to this Consent Decree. The COMPANY shall direct the EMS Auditor to concurrently submit the final EMS Audit Plan to EPA and the COMPANY upon completion. The audit shall be completed within 60 days of submission of the final EMS audit plan.
 15. EPA shall approve the EMS Audit Plan if it satisfactorily addresses the elements of Paragraph 13.
 16. Within sixty (60) days after the COMPANY's receipt of EPA's approval of the EMS The EMS Audit shall be conducted in accordance with ISO 19011 (First edition, 2002-10-01). The EMS Auditor shall assess conformance with the criteria specified in **Paragraph 13** above, and shall determine the following:
 - a. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element
 - b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained
 - c. The adequacy of each operation's internal self-assessment procedures for programs and tasks composing the EMS
 - d. Whether the COMPANY is effectively communicating environmental requirements to affected parts of the organization, or those working on behalf of the organization
 - e. Whether further improvements should be made to the EMS to better conform to the audit criteria
 - f. Whether there are observed deviations from the COMPANY's written requirements or procedures
 - g. Whether continual improvement is occurring
 17. Designated representatives from EPA, the COMPANY, and other environmental regulatory agencies may participate in the EMS audit as observers, but may not interfere with the independent judgement of the EMS Auditor. The COMPANY shall notify EPA at least ten (10) days before the commencement of the on-site portion of the EMS Audit to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present.
 18. EMS Audit Report - The COMPANY shall direct the EMS Auditor to develop and concurrently submit an EMS Audit Report to the COMPANY and EPA for the EMS

Audit as required by this Consent Decree, within sixty (60) days following the completion of the on-site portion of the audit. The EMS Audit Report shall present the Audit Findings and shall contain the following information:

- a. Audit scope, including the period of time covered by the audit
 - b. The date(s) the on-site portion of the audit was conducted
 - c. Identification of audit team members
 - d. Identification of the COMPANY representatives and regulatory agency personnel observing the audit
 - e. The distribution for the EMS Audit Report
 - f. A summary of the audit process, including any obstacles encountered
 - g. Detailed Audit Findings, including the basis for each finding and each Area of Concern identified
 - h. Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented
 - i. Certification by the EMS Auditor that the EMS Audit was conducted in accordance with the provisions of this Decree.
19. If the EMS Auditor believes that additional time is needed to analyze available information or to gather additional information, the COMPANY may request that EPA grant the EMS Auditor such additional time as needed to prepare and submit the Audit Report. EPA's decision whether to grant additional time shall be final and unreviewable.

Follow-Up Corrective Measures

20. **Audit Response and Action Plan.** Upon receiving the Audit Report, the COMPANY shall review and evaluate the Audit Findings and any need for conducting a root cause analysis of the identified Audit Findings, and shall investigate all Areas of Concern. Within sixty (60) days of receiving the Audit Report for each Facility, the COMPANY shall develop and submit to EPA for review and comment a response to the EMS Audit Report, (the "Audit Response and Action Plan"). The Audit Response and Action Plan shall provide a response to the findings and areas of concern identified in the EMS Audit Report and provide an action plan for expeditiously bringing the Facility into full conformance with the EMS provisions in Paragraph 5 of this Decree and the EMS Manual, and fully addressing all Areas of Concern. The Audit Response and Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified actions and measures, including those that may have already been completed.
21. Final Audit Response and Action Plan - EPA will provide comments on the Audit Response and Action Plan and the COMPANY shall, within thirty (30) days of receipt of EPA's comments on the Audit Response and Action Plan, submit to EPA a Final Audit Response and Action Plan.

22. After making any necessary modifications to the Audit Response and Action Plan based on EPA comments, if any, the COMPANY shall implement the Audit Response and Action Plan in accordance with the schedules set forth therein.
23. Certification of EMS Implementation
- a. Within 10 days after completion of an EMS Audit in which no instances of nonconformance with the EMS Standard were found at the respective audited Facility, the COMPANY shall submit a Request for Certification of EMS Implementation to the EMS Auditor. Within ten (10) days after the receiving the certification request, the EMS Auditor shall issue to The COMPANY a Certification of EMS Implementation for the respective Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard.
 - b. Alternately, within 10 days after completion of actions or measures identified in the Final Audit Response and Action Plan, The COMPANY shall submit to the EMS Auditor a Request for Certification of EMS Implementation.
 - c. As soon as practicable, but in no event later than 30 days after it has received the certification request pursuant to Subparagraph b. of this Paragraph, the EMS Auditor shall, as necessary, reinspect the respective Facility (i.e., conduct a "Certification Review") and submit to the COMPANY a written statement identifying those Audit Findings which have been addressed and any which have not, including an explanation describing the failure to address or correct, as appropriate, any Audit Findings. The COMPANY shall use its best efforts to address in a timely manner any outstanding Audit Findings identified during the Certification Review.
 - d. When the EMS Auditor concludes that all Audit Findings have been addressed at the respective Facility, the EMS Auditor shall issue to the COMPANY a Certification of EMS Implementation for the respective Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard.
 - e. Within ten (10) days of receipt, the COMPANY shall submit a copy of each Certification of EMS Implementation to EPA.

APPENDIX B

SUPPLEMENTARY REQUIREMENTS FOR ISO 14001-2004 (second edition)
(3 pages)

**SUPPLEMENTARY REQUIREMENTS FOR ISO 14001-2004
(SECOND EDITION)**

4.3.1 Environmental Aspects

Add new second paragraph after “b” as follows:

Consistent with 4.5.3, the aspects/impacts assessment carried out pursuant to this section 4.3.1 shall specifically include, but not be limited to, identifying activities, products, or services where equipment malfunctions and deterioration, operator errors or deliberate malfeasance are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with legal requirements.

4.3.2 Legal and Other Requirements

Add new subsections as follows:

- (c) To communicate those requirements to affected organization personnel or those acting on its behalf (i.e, those who function as *de facto* employees). Information about applicable legal requirements shall be used to plan, develop, and implement ongoing routine evaluation of compliance, consistent with 4.5.2, to ensure that the organization’s activities conform to those requirements
- (d) For prospectively identifying and obtaining information about changes and proposed changes in legal requirements, and incorporating those changes into the EMS (i.e., regulatory “change management”)
- (e) For communicating with regulatory agencies regarding legal requirements and regulatory compliance .

4.3.3 Objectives, Targets, and Programme(s)

To end of second paragraph add:

Targets and objectives shall include, where appropriate, actions which reduce the risk of noncompliance with legal requirements and minimize the potential for unplanned or unauthorized releases.

4.4.1 Resources, Roles, Responsibility and Authority

Add to end of first paragraph as follows:

Management shall integrate environmental planning into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs and maintenance activities.

4.4.2 Competence, Training, Awareness

Add to end of first paragraph

This requirement shall also extend to any person within the organization or acting on its behalf whose activity has the potential to cause environmental regulatory noncompliance.

4.4.3 Communication

Replace opening paragraph and subsection as follows:

With regard to its environmental aspects, compliance with legal requirements and environmental management system, the organization shall establish and maintain procedures for:

- (a) An ongoing means of internal communication regarding environmental issues and information among the various levels and functions of the organization, to include all organization personnel and those working on its behalf, and a means for receiving, documenting, and responding relevant communication from those individuals

Add new subsection as follows:

- (c) As appropriate, implementing and maintaining security measures to prevent unauthorized disclosure of environmental management system information (including audits and reviews) and documentation, which shall include protocols for responding to inquiries and requests for release of information.

4.4.6 Operational Control

Add new subsections as follows:

- (d) Conducting and documenting routine, objective, self-inspections by supervisors and trained staff to check for malfunctions, deterioration, worker noncompliance with operating criteria, unusual situations and unplanned or unauthorized releases.
- (e) Developing, implementing and maintaining a “management of change” procedure to incorporate identification and consideration of legal requirements and environmental aspects during the planning and design of new and/or changes to buildings, operations, processes, equipment, maintenance activities, and products.

4.4.7 Emergency Response and Preparedness

Add to end of first paragraph

The procedures shall address internal and external reporting of environmental incidents and noncompliance with legal requirements.

4.5.2.1 Evaluation of Compliance

Add new paragraphs following the first paragraph as follows:

The compliance evaluations shall include:

- (a) A compliance audit conducted at least annually, by an auditor(s) independent of the facility being audited. Evaluation results are reported to senior management and nonconformities (i.e., instances of noncompliance) are addressed through the process developed pursuant to element 4.5.3, below. The organization's annual compliance audit workplan, including any schedule, shall be based on the legal requirements applicable to the evaluated facility, and the results of previous audits.
- (b) Conducting and documenting routine, objective, self-inspections by supervisors and trained staff.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Bedoukian Research Inc., Docket Nos. TSCA-HQ-2024-5006 and EPCRA-HQ-2024-5006, were sent to the following persons in the manner indicated:

By E-mail:

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Dated: Feb 06, 2025

Tommie Madison

Tommie Madison
Clerk of the Board